IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-09-2007

Coram :

The Hon'ble Mr. Justice ELIPE DHARMA RAO
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.35608 of 2003

A.Samikannu … Petitioner

vs.

1. The Superintendent of Police
District Police Officer, Erode - 1.

2. The Registrar
Tamil Nadu Administrative Tribunal,
Chennai - 104. .. Respondents

Writ Petition, seeking certiorari is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records of the respondents in connection with the impugned order passed by the second respondent in O.A.No.3307 of 2002, dated 25.03.2003 confirming the order of the first respondent in P.R.J1/111/95, dated 03.06.2002 and to quash the same.

For Petitioner : Mr.K.Venkataramani
Senior Counsel for
Mr.M.Muthappan

For Respondents : Mr.C.Ramesh, AGP for R1

WEB COPY

O R D E R

S.TAMILVANAN, J

This writ petition has been preferred against the order of the second respondent, dated 25.03.2003 made in O.A.No.3307 of 2002, whereby the order of the first respondent in P.R.J1/111/95, dated 03.06.2002 was confirmed by the Tamil Nadu Administrative Tribunal,

https://hcservices.ecourts.gov.in/hcservices/

Chennai.

2. It is not in dispute that the petitioner herein joined the police service as Grade-II Police Constable in Erode District on 15.04.1977 and promoted as Grade-I Police Constable in the year 1995. In the year 1994-95, while working as Grade-I Police Constable, attached to Anthiyur police station, Erode District, the petitioner was served with a charge memo in P.R.J1/111/95 under Rule 3 (b) of TNPSS (D&A) Rules, containing four charges.

3. The first charge is that the writ petitioner, while working as Grade-I Police Constable had received passport at 8 a.m, on 17.11.1994 to proceed to the Government Headquarters Hospital, Erode for getting wound certificates, relating to U.I. cases, but he failed to return to the station on the same evening itself. He overstayed at Erode from 18.11.1994 to 20.11.1994 and subsequently, he returned back and reported duty, only on 21.11.1994 at 5 a.m and thereby committed dereliction of duty.

4. The second charge is that he was sent along with other Police Constables to Sambulichampalayam in Anthiyur police limits for Bandobust duty on 29.01.1995 and he had to report back at Anthiyur Police Station at 11.15 p.m, on the same date, but he had failed to report duty on the said date, though the other police constables had reported duty, as per instructions, and he proceeded to Erode, on his own accord and thereby failed to discharge his duties properly.

5. The third charge is that the petitioner along with PC 254 Thirumoorthy was on duty at Government Hospital, Erode to guard an accused relating to the case of Anthiyur Police Station in Cr.No.67/95, who had been admitted as inpatient in the Hospital. Though, they were relieved from guard duty at 8 hrs on 14.02.1995 by Police Constables 1267 and 543, in view of the ensued inspection of Deputy Inspector General of Police, Coimbatore Range at Anthiyur Police Station on 16.02.1995, the petitioner failed to return back and report at Anthiyur Police Station on 14.02.1995 evening, but he had applied medical leave for a period of 14 days, in order to evade the inspection of the Deputy Inspector General of Police to be conducted on 16.02.1995.

6. The fourth charge is that he used abusive words against Head Constable 315 Rajadurai on 14.03.1995, while the petitioner was informed that he should get permission only from the Inspector of Police, Anthiyur for availing off-duty and also for sending telegrams to superior officers on 14.03.1995 levelling false allegations against the Inspector of Police and other higher officials.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. The Deputy Superintendent of Police, Erode, who was appointed as enquiry officer held that all the four charges framed against the petitioner have been proved, after considering the oral evidence of six witnesses and also the documents marked in the enquiry. Considering the materials available on record and the finding of the enquiry officer, the disciplinary authority, namely, Superintendent of Police Erode District, held that except the first part of the fourth charge, all the charges have been proved and imposed punishment of "Reduction in pay by three stages in time scale of pay for a period of three years and the period of reduction shall operate to postpone his future increments. Its effect on pension, if any is considered and intended."

8. Aggrieved by the order of the first respondent, the petitioner preferred O.A.No.3307 of 2002 before the Tamil Nadu Administrative Tribunal at Chennai. The Tamil Nadu Administrative Tribunal has held that the findings given by the disciplinary authority, considering the report of the Enquiry Officer as legally acceptable, as the same is based on evidence and that the disciplinary authority has also given proper reasoning for accepting the findings of the Enquiry Officer, except the first part of the fourth charge. The Tribunal has held that the findings of the Enquiry Officer and the acceptance of the same by the disciplinary authority could not be found fault with, as the same is based on evidence available on record. The Tribunal has further held in the impugned order as follows :

> " The applicant has been punished for the above said four charges by ordering reduction in time scale of pay by three stages for three years and also postponing all his future increment with cumulative effect. It is true that the punishment imposing postponing future increment to the applicant is not provided in the rules and is also highly excessive and disproportionate. Therefore, the punishment of reduction of time scale of pay by three stages for three years with cumulative effect is only just and adequate for the proved charges. Therefore, while confirming the findings, the order of punishment is only modified to the extent that postponment of future increment is to be deleted and only rest of the punishment as stated above is to be enforced against the applicant… "

9. According to Mr.K.Venkataramani, learned Senior Counsel appearing for the petitioner, due to inordinate delay, the departmental proceedings initiated against the petitioner would be

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

vitiated. He has further contended that there is no acceptable evidence to impose punishment on the petitioner herein. So far as the first charge held to have been proved by the Tribunal, the learned counsel appearing for the petitioner contended that in the passport given to the petitioner on 17.11.1994, time to report duty at the police station was not mentioned and due to the delay in getting the wound certificates, he could report duty only on 21.11.1994. Similarly for the third charge, he would contend that the petitioner due to his ill-health, was admitted in a hospital and had applied 14 days Medical Leave. He has also raised his defence for the other charges held as proved by the respondents.

10. As held by the Tamil Nadu Administrative Tribunal, the delay has been properly explained by the first respondent. On the facts and circumstances, supported by evidence, we are of the considered view that the alleged delay in the writ petition would not vitiate the departmental proceedings.

11. In the grounds of the writ petition, the petitioner has stated that there is no acceptable evidence to impose punishment on the petitioner, but the same cannot be accepted, as the finding is based on evidence available on record. On the side of the department, 6 witnesses were examined, apart from marking documents. It is not disputed by the petitioner that on 17.11.1994, at about 8 a.m, passport was issued by the Sub-Inspector of Police to the petitioner in order to proceed to Government Headquarters Hospital, Erode for obtaining wound certificates, relating to certain cases, registered in Anthiyur police station and that he reported duty only on 21.11.1994 at 5 a.m. The arguments advanced by the learned Senior Counsel for the petitioner that no time limit was specified in the passport to return back and report duty is legally not sustainable. It is not in dispute that after getting the wound certificates, the petitioner could have returned back to the station on the same date on 17.11.1994 or on the next day, even if the wound certificates could not be obtained by him. But without any acceptable reason and intimation, he failed to return back to the station and report duty in time. We are of the considered view that reporting duty after 4 days without proper reasoning would certainly be construed as dereliction of duty. We are of the view that the finding of the enquiry officer with regard to the first charge is based on evidence available on record and the same has been correctly upheld by the Tribunal.

12. As per the second charge, it is seen that the petitioner had been directed to report duty on 29.01.1995, after his bandobust duty at Sambulichampalayam in Anthiyur police limits along with other constables, who were also attached to the same police station. It is not disputed that except the petitioner herein, other constables reported, as per the instructions of their superior

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

officer. The above said fact has been established, by way of evidence, for which there is no legally acceptable defence from the petitioner herein.

13. As far as the third charge is concerned, it is not in dispute that he was posted for guarding the accused in Anthiyur Cr.No.67/95 at District Headquarters Hospital, Erode, along with Police Constable Thirumoorthy and both were relieved on 14.02.1995 at 8 a.m. Though, other constable reported duty as per instructions, the petitioner did not report duty, but had applied Medical Leave for 14 days, in spite of knowing the fact of the inspection of Deputy Inspector General of Police at Anthiyur police station on 16.02.1995.

14. The learned counsel appearing for the petitioner would contend that the petitioner had suddenly fell ill and could not wait for getting permission from his superior officer before taking treatment in the hospital and that is why he applied Medical Leave. But the petitioner has not established his averments that he had been admitted in any hospital as inpatient on the alleged date. As found by the enquiry officer, Ex.D.8, Certificate given by the medical officer on a later date could not be given credence. Therefore, as held by the Tribunal, we are of the view that the defence raised by the petitioner for Charge No.3 cannot be legally accepted in a disciplined service.

15. As far as the Charge No.4 is concerned, the enquiry officer held that the same has been proved, where as the disciplinary authority, namely, the first respondent herein has fairly decided that there is no acceptable evidence to show that the petitioner had used abusive words towards Head Constable 315, Rajadurai, but there is evidence to show that the petitioner had sent telegrams to the superior officer, levelling false allegations against the Inspector of Police and others.

16. The Hon'ble Supreme Court in the decision M.V.Bijlani vs. Union of India, reported in 2006 (5) SCC 88, has held at page 95 as follows.

> " It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e, beyond all reasonable doubt, we cannot lost sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record."

17. As per this decision rendered by the Hon'ble Apex Court in a writ petition filed under Article 226 of the Constitution of India, the jurisdiction of this Court relating to judicial review is limited. It is a settled proposition of law that in the Departmental Enquiry, the charges need not be proved beyond all reasonable doubt, as that of a criminal case and it would be sufficient to establish on the basis of preponderance of probability to prove the charges based on the materials available on record.

18. In the decision Union of India vs. Sardar Bahadur, reported in 1972 (4) SCC 618, the Full Bench of the Hon'ble Apex Court has held that a finding cannot be characterised as perverse or unsupported by any relevant materials if it is a reasonable inference from proved facts, as the disciplinary proceedings is not a criminal trial. The standard proof required in the domestic enquiry is that of preponderance of probability and not proof beyond reasonable doubt.

19. Therefore, we are of the considered view that this Court can interfere only if there is any manifest error of law or perverse finding, leading to miscarriage of justice in the impugned order under challenge. It is not the case of the petitioner that the Tribunal or the authorities had no jurisdiction to decide the issue involved in the writ petition and that there is no manifest error of law in the impugned order. Only if the finding is against the evidence available on record or without evidence, the court can come to the conclusion that it would be construed as perverse finding. In this case, it has been clearly established, by way of evidence available on record that the charges 1,2, 3 and first part of the charge number 4 levelled against the petitioner have been established. Therefore, it cannot be construed as perverse finding, leading to miscarriage of justice.

WEB COPY

20. The Hon'ble Supreme Court in the Full Bench decision State of Haryana vs. Rattan Singh, reported in 1982 (1) LLJ 46, rendered by His Lordship V.R.Krishna Iyer,J, has held that in a domestic enquiry strict and sophisticated rules of evidence under the Indian Evidence Act are not applicable. Fair play is the basis and if there is no perversity, arbitrariness or bias of surrender of independence, which would not vitiate the findings in a Departmental Proceeding. The decision further reads as follows :

https://hcservices.ecourts.gov.in/hcservices/

" The "residium" rule to which counsel for the respondent referred, based upon certain passages from the American Jurisprudence does not go to that extent nor does the passage from the Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as men of understanding and worldy wisdom will accept."

21. Considering the arguments advanced by both the learned counsel and the impugned order and the evidence available on record, in the light of the decisions rendered by the Hon'ble Apex Court, we are of the considered view that there is no error or infirmity in the impugned order. In fact the Tamil Nadu Administrative Tribunal while accepting the finding of the disciplinary authority, considering the proportionality of punishment and considering the charges, has reduced the punishment, which is no way exorbitant or against law. Therefore, we are of the considered view that there is no error or infirmity in the impugned order, so as to warrant the interference of this Court, under Article 226 of the Constitution of India.

21. In the result, writ petition fails and accordingly, the same is dismissed. No order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

1. The Superintendent of Police
District Police Officer, Erode - 1.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The Registrar
Tamil Nadu Administrative Tribunal,
Chennai - 104.

+1cc to Mr.T.Ayngaraprabhu, Advocate Sr 57020

+1cc to Govt. Pleader Sr 57070

LA (CO)
km/17.9.

W.P.No.35608 of 2003

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/